

summary in each occupied building in the project. The summary shall notify tenants that they have sixty calendar days in which to submit any comments to the Commissioner, who shall take any such comments into account before giving final approval to the plan of action.

(Approved by the Office of Management and Budget under control number 2502-0378)

§ 248.219 Notification of approval.

(a) Not later than 180 days after initial receipt of a plan of action, or within such longer period as the owner requests, the Commissioner shall notify the owner in writing whether the plan of action, including any revisions, is approved.

(b) If approval is withheld, the notice will—

(1) Describe the reasons for withholding approval, including prolonged delay by the owner in submitting a revised plan of action;

(2) Describe the actions that could be taken to meet the criteria for approval; and

(3) Afford the owner a reasonable opportunity to revise the plan of action and seek approval.

§ 248.221 Approval of a plan of action that involves termination of low income affordability restrictions.

The Commissioner may approve a plan of action that involves termination of the low income affordability restrictions only upon a written finding that—

(a) Implementation of the plan of action will not materially increase economic hardship for current tenants (and will not in any event result in: (1) A monthly rental payment by a current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent, whichever is lower, or (2) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent, whichever is lower) or involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not

readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement. Notwithstanding this limitation, the Commissioner may provide housing assistance to tenants if such assistance is not essential to the Commissioner's determination that the requirements of this paragraph have been met. The owner will agree to execute and allow the recordation of use agreements, where such agreements are necessary to safeguard current tenants against such adverse effects. Such use agreements will include a requirement that the owner comply with those provisions of part 247 of this chapter which relate to evictions; and

(b)(1) The supply of vacant, comparable housing is sufficient to ensure that the prepayment will not materially affect—

(i) The availability of decent, safe and sanitary housing affordable to low-income and very low income families in the area that the housing could reasonably be expected to serve;

(ii) The ability of low-income and very low income families to find decent, safe and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located; or

(2) The plan of action has been approved by the appropriate State agency and any appropriate local government agency for the jurisdiction in which the housing is located as being in accordance with a State strategy approved by the Commissioner under § 248.223 of this part.

(c) There are no open audit findings, open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities (including, but not limited to, 24 CFR part 100), or outstanding violations of the regulatory agreement.

(d) Any plan of action approved under this section shall specify actions that

§ 248.223

the Commissioner and the owner shall take to ensure that tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

[55 FR 38952, Sept. 21, 1990. Redesignated and amended at 57 FR 12041, 12060, Apr. 8, 1992]

§ 248.223 Alternative State strategy.

(a) The Commissioner may approve a State strategy providing for State approval of plans of action that involve termination of low income affordability restrictions only upon finding that it is a practicable statewide strategy that ensures at a minimum that—

(1) Current tenants will not be involuntarily displaced (except for good cause);

(2) Housing opportunities for minorities will not be adversely affected in the communities in which the housing is located;

(3) Any increase in rent for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenants or fair market rent, whichever is lower, and any increase not necessitated by increased operating costs shall be phased in equally over not less than 3 years if the increase exceeds 10 percent;

(4) Housing approved under the State strategy will remain affordable to very low income, low income and moderate income families for not less than the remaining term of the mortgage, if the housing is to be made available for rental use, or for not less than 40 years, if the housing is to be made available for homeownership;

(5)(i) Not less than 80 percent of all units in eligible low income housing approved under the State strategy will be retained as affordable to families or persons meeting the income eligibility standards for initial occupancy that applied to housing on January 1, 1987; and

(ii) Not less than 60 percent of the units in any one project will remain available to and affordable by such families or persons, within which not less than 20 percent of the units will remain available to and affordable by very low income families;

(6) Expenditures for rehabilitation, maintenance and operation will be at a level necessary to maintain the hous-

24 CFR Ch. II (4–1–03 Edition)

ing as decent, safe and sanitary and for the period specified in paragraph (a)(4) of this section;

(7) Not less than 25 percent of new assistance required to maintain the housing as available to and affordable by low income families in accordance with this section shall be provided through State and local actions, such as tax exempt financing, low income tax credits, State or local tax concessions, the provision of funds from housing finance agency reserves or housing trust funds, taxable bonds, and other incentives provided by the State or local governments; and

(8) For each unit of eligible low income housing approved under the State strategy that is not retained as affordable housing to families or persons meeting the income eligibility standards for initial occupancy on January 1, 1987, the State will provide, with State funds, one additional unit of comparable housing in the same market area that is available to and affordable by such families and persons. Such units will be provided by conversion of existing units or construction of new units. These units or funds will be made available before the Commissioner approves the State strategy.

(b) *Additional requirements.* (1) The State must enter into all agreements necessary to carry out the State strategy before receiving the Commissioner's approval.

(2) Each State strategy shall include any other provision that the Commissioner determines to be necessary to implement the approved State strategy.

§ 248.231 Incentives to extend low income use.

The Commissioner may agree to provide one or more of the following incentives to induce the project owner to extend the low income use of the project, if the Commissioner determines that such incentives are warranted under the standards in § 248.233 of this part:

(a) An increase in the allowable distribution, or other measures to increase the rate of return;

(b) Revisions to the method of calculating equity;